IN THE HIGH COURT OF BOMBAY AT GOA
****

FIRST APPEAL NO. 42 OF 1992

Oriental Insurance
Co. Ltd., having its
Divisional Office at
Gouviea Chambers, 3rd
Floor, Helidoro Salgado
Road, Panaji, Goa. ... Appellant

Versus

1. Smt. Olivia Vaz,
alias Maria Olivia Vaz,
w/o late Joseph Vaz,
major, widow,

2. Miss Deluna Vaz, d/o
Joseph Vaz, major,
spinster,

3. Mr. Ivan Vaz, s/o
Joseph Vaz, major,
bachelor,

4. Mr. Joel Vaz,
s/o Joseph Vaz,
major, married,

5. Mrs. Eudecia Vaz,
w/o Joel Vaz,
major, married,

6. Mr. Julius Vaz, s/o
Joseph Vaz, major,
bachelor,

7. Mr. Maurice Vaz,
s/o Joseph Vaz,
major, bachelor, and

8. Mr. Elvis Vaz, s/o
Joseph Vaz, major,
bachelor,
all r/o Shamiana Bldg.,
Comba, Margao, Goa.

9. Mrs. Belina V. Noronha,
d/o Joseph Vaz,
major, married,

10. Mr. Santana Alan Noronha,
major, husband of Mrs.
Belina V. Noronha,

both r/o 201 Street,
North-West, Florida,
333169, Miami, U.S.A.,

11. Mrs. Fila Vaz, d/o
Joseph Vaz, major,
married,

12. Mr. Anil Perswani,
major, married,
husband of Mrs. Fila Vaz,
both r/o 438 210 Citer,
Miami, Florida, 33179 U.S.A.,

13. Mrs. Jennifer da Silva,
d/o Joseph Vaz,
major, married,

14. Mr. Cyril da Silva,
major, married,
husband of Mrs. Jennifer
da Silva,
both r/o 28, Windsor Road,
Thorantun Health, Surrey
CR 4 8HE, London,

15. Shri Suresh Pundalik
Dessai, s/o P. Dessai,
major, driver of vehicle
no. GDZ-2270, r/o House
no. 229, Malbhat,
Margao, Goa, and

16. Shri Pankaj Shukla,
major, married, owner
of vehicle no. GDZ-2270,
r/o c/o Mr. Neelam Mishra,
A-3, Samadhan Bldg.,
Malbhat, Margao. ... Respondents

Shri E. Afonso, advocate for the appellant.

Shri E. P. Lobo, advocate for the respondent no.1.

CORAM : R. J. KOCHAR, J.

DATE : 19th September, 2003.

ORAL JUDGMENT

The appellant is the Insurance Company, which is aggrieved by the Judgment and Order passed by the Motor Accident Claims Tribunal, South Goa at Margao on 17th

December, 1991, in Claim Petition No.241 of 1988 filed by the claimants, the widow and the sons and daughters of the deceased who met with a fatal accident on 16th May, 1988. The deceased was knocked down by a passenger mini bus owned by one Shri Pankaj Shukla, respondent no.2, before the Tribunal and respondent no.16 before this Court. The respondent no.1 was the driver of the said bus which was insured with respondent no.3 before the Tribunal and the present appellants. The liability of the Insurance Company in the policy which was valid for the period from 6th August, 1987 to 5th August, 1988, was Rs.50,000/-. There is no dispute that the motor vehicle was a passenger vehicle and there is also no dispute that the deceased was run over by the said passenger bus. There is also no dispute that the deceased died on account of the said accident. The widow and the other claimants are the legal heirs of the deceased who filed the Claim Petition before the Tribunal, claiming an amount of Rs.10,05,000/- as compensation for the death of the deceased in the said accident.

2. Both the sides after completion of the pleadings adduced evidence, oral and documentary. On the basis of the pleadings and evidence, the learned Presiding Officer of the Tribunal held that the appellant, the Insurance Company, was liable to pay a sum of Rs.88,000/- with interest at the rate of 10% per annum from the date of filing of the petition till final payment, after adjusting a

sum of Rs.15,000/- awarded to the claimants in proceedings under Section 92-A of the Motor Vehicles Act, 1939. A cost of Rs.3,000/- was also awarded. The Tribunal held that under the amended law, the minimum liability of the Insurance Company in respect of the third party was raised to Rs.1,50,000/-. The Tribunal did not accept the contention of the Insurance Company that its liability under the amended law was only Rs.50,000/-, as contemplated under Section 95 (2)(b) of the Motor Vehicles Act. The Tribunal has not accepted the contention of the Insurance Company that its liability was limited to only Rs.50,000/-. After holding that the liability of the Insurance Company was upto Rs.1,50,000/-, the Tribunal directed the respondents to pay jointly and severally to the claimants a total compensation of Rs.88,000/-, with accrued interest at the rate of 10% from the date of filing of the petition till final payment.

3. The principal and the only grievance made by the appellant - Insurance Company - is that the Tribunal has committed a grave error of law in fastening the liability on the Insurance Company to the extent of Rs.88,000/-, while under the law, the maximum liability of the Insurance Company under Section 95 (2) (b) was Rs.50,000/- only. The learned counsel for the appellant has submitted that under Section 95 (2) (b) of the Motor Vehicles Act, it is clearly stated that the maximum liability of the Insurance Company in respect of the passenger bus involved in an accident with third party

was Rs.50,000/- and not Rs.1,50,000/-, as erroneously held by the Tribunal. The learned counsel further pointed out that the liability of the Insurance Company in respect of goods vehicle was enhanced to Rs.1,50,000/- under Section 95 (2)(a) and the learned Presiding Officer of the Tribunal has mistaken this provision for the accidents involving persons other than passengers in a passenger bus. He further submitted that the liability of the Insurance Company as on the date of the accident i.e. 16th May, 1988 stipulated in the aforesaid Section 95 (2)(b) was Rs.50,000/- and the said amount the Insurance Company is liable to pay and is prepared to pay. Shri Afonso, learned counsel appearing on behalf of the appellant, has relied on the following three authorities:-

(i) **Padma Srinivasan vs. Premier Insurance Company Ltd.,** 1982 A.C.J. 191 (SC),

(ii) **Inderjeet Singh & Co. vs. Kamal Prakash Pawar & Ors.,** AIR 1989 Bom.325 (DB), and

(iii) **New India Assurance Co.Ltd. vs. C.M. Jaya & Ors.,** AIR 2002 SC 651.

4. The learned counsel appearing for the respondents, on the other hand, does not seriously dispute the legal position as aforestated, though the learned counsel tried to point out that vide the 1982 Amendment to the Motor Vehicles Act, 1939, the amount of compensation was enhanced to Rs.1,50,000/-. He tried to draw support from paragraph 5

of the Judgment in the case of **Indarjeet Singh & Co. vs. Kamal Prakash Pawar & Ors.** (supra). The learned counsel, however, after debate in the Court and reading correctly the relevant section, fairly conceded that that was not the correct legal position and he fairly accepted that the liability of the Insurance Company qua the passenger buses involving accidents with other passengers, namely third parties, is upto Rs.50,000/-. He, however, appealed sentimentally to the conscience of this Court that the deceased person who was aged 33 years was the only earning hand of his widowed mother and had died in the accident in question in the prime time of his life. He further pointed out that the deceased has other brothers and sisters, who being not employed were wholly dependent upon the deceased. He also submitted that though the claim of the claimants was Rs.10,00,000/-, the Tribunal has awarded only Rs.88,000/- and as his clients were not properly advised, they did not carry the matter further. He further fervently submitted that in view of the very paltry sum of compensation awarded by the Tribunal, this Court should not interfere with the award of compensation, considering the fact that the claimant no.1 herself was a widow and the deceased was the only working son and there were others who were not employed and not working, who were dependent upon the deceased.

5. As far as the legal position is concerned, I must say in all fairness to the learned counsel for the

respondents,that he has accepted that the liability of the Insurance Company is statutorily determined under Section 95 (2)(b) of the Motor Vehicles Act to the extent of Rs.50,000/- only. As on the date of the accident that was the legal position, which is reiterated by the Division Bench of this Court in paragraph 6 of the Judgment of this Court in **Indarjeet Singh & Co. vs. Kamal Prakash Pawar & Ors.,** (supra), which reads as under:-

> "6. Relying on this provision, it was contended that the liability of the Insurance Company arises only on the date of the judgment and, therefore, in any event, the provisions of the Amending Act No. 47 of 1982 which had come into force before the date of the judgment must apply to the instant case. We are unable to accept this argument for the simple reason that the liability of the Insurance Company is incurred on the date of the accident. The judgment merely determines the quantum of compensation payable to the claimants arising out of the accident. It is the date of the accident, therefore, which is the relevant date for the applicability of S.95(2) of the Act which provides for the liability of the Insurance Company incurred in respect of any one accident. It would, therefore, be not correct to say that the liability of the Insurance Company arises on the date of the judgment. Section 96(1) of the Act only deals with the obligation of the Insurance Company to satisfy the judgment, whereas the liability of the Insurance Company is dealt with by S.95(2) of the Act."

6. There is no dispute that the compensation awarded has to be as on the date of the accident and not as on the date of the giving of the Judgment or passing of the Award, as held by the Supreme Court in the case of **Padma**

Srinivasan vs. Premier Insurance Company Ltd. (supra).

Paragraphs 7 and 8 need to be reproduced below:-

> "7. Thus, there is no question here, as the High Court thought, of giving retrospective operation to the amendment introduced by amending Act 56 of 1969, by which the statutory liability of the insurer was increased from twenty thousand rupees to fifty thousand rupees with effect from March 2, 1970. That question would have arisen if the accident had happened prior to that date. The accident having happened on April 5, 1970, the questions as to the extent of the insurer's liability must be determined by the application of the law introduced by the amendment which had come into force before the date of the accident. The application of a law to facts which come into existence after that law has come into force does not involve giving retrospective operation to the law, merely because the facts to which the law is being applied are relatable to a contract or an instrument which had come into operation prior to the date on which the law itself had come into force.
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> 8. We endorse the view taken by the Full Bench of the Karnataka High Court in **Sanjiva Shetty v. Anantha.** The Full Bench overruled the judgment which is under appeal in the instant case and held that the material date for ascertaining the extent of liability of the insurer is the date of the accrual of the cause of action for a claim arising out of an accident, which in general would be the date of the accident and therefore, the insurer's liability arising out of an accident which happens after March 2, 1970, has to be determined on the basis of the amended provisions of section 95 (2) (a) of the Act, even though the policy of insurance may have been issued prior to the date of the amendment, that is, prior to March 2, 1970."

The learned counsel for the appellant is further supported by the Judgment of the Supreme Court in the case of

New India Assurance Co. Ltd. vs. C. M. Jaya & Ors., (supra). The Supreme Court has observed in paragraphs 12 and 13 as under:-

> 12.....
> .....
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> It is not in dispute from the admitted copy of the insurance policy produced before the Court that the liability of the appellant is limited to Rs.50,000/- in regard to the claim in question. The relevant clause in the policy relating to limits of liability reads:-
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> | |
> |---|
> | Limits of Liability: Limit of the amount of the Company's liability under Section II-1(i) in respect of any of one accident. ------Rs.50,000/- |
> | Limit of the amount of the Company's liability under Section II-1(ii) in respect of any claim or series of claims arising out of one event ------Rs.50,000/- |
>
> It is also not the case that any additional or higher premium was paid to cover unlimited or higher liability than the statutory liability fixed as found in the term of the policy extracted above. In the light of the law stated above, it necessarily follows that the liability of the appellant is limited to Rs.50,000/-, as was rightly held by the Tribunal. The High Court committed an error in taking the contrary view that the liability of the appellant was unlimited merely on the ground that the insured had taken a comprehensive policy. In Shanti Bai's case, this Court has clearly expressed the opinion that a comprehensive policy issued on the basis of the estimated value of the vehicle does not automatically result in covering the liability with regard to third party risk for

> an amount higher than the statutory limited in the absence of specific agreement and payment of separate premium to cover third party risk for an amount higher than the statutory limit. This position is accepted in Amrit Lal Sood's case as well though no reference is made to this case. As already stated above, in Amrit Lal Sood's case, the Court found an express term in the policy for covering wider risk and to meet the higher liability unlike in the case of Shanti Bai. Therefore, the High Court was not right in holding that the liability of the appellant insurance-company was unlimited merely on the ground that the vehicle in question, i.e. the truck was covered by a comprehensive insurance policy. AIR 1998 SC 1433: 1998 AIR SCW 1327
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> 13. In the circumstances, we hold that the liability of the appellant-insurance company is limited to Rs.50,000/-, as held by the Tribunal. In the view we have taken, it is unnecessary to go into the question relating to either maintainability of cross-objections before the High Court against the appellant alone or as to the enhancement of compensation when the owner and driver have not filed appeal against the impugned judgment."

7. It is, therefore, crystal clear from the provisions of law and also from the Judgment of the Supreme Court as well as our High Court, that the liability of the Insurance Company would occur as on the date of the accident and in accordance with the provisions of law prevalent on the date of the accident and in accordance with the insurance policy. The ceiling of the compensation under Section 95 (2) (b) of the Motor Vehicles Act in respect of the passenger bus involved in an accident in the case of a third party is Rs.50,000/- only.

8. The Order of the learned Presiding Officer of

the Tribunal, therefore, is hereby modified to the extent that the liability of the Insurance Company is Rs.50,000/- and not upto Rs.1,50,000/-. The Tribunal has erroneously held that the liability of the Insurance Company is upto Rs.1,50,000/- and, therefore, the Tribunal has fastened on the Insurance Company a liability jointly and severally, to the extent of Rs.88,000/-. As far as this legal position is concerned, the Award of the Tribunal requires to be quashed and set aside to the extent of fixing the liability on the Insurance Company at Rs.1,50,000/- and directing the Insurance Company to pay a sum of Rs.88,000/- jointly and severally.

9. Though the Insurance Company has succeeded on the law point, considering the facts and circumstances in the present case, I am not inclined to deny the award of compensation of Rs.88,000/- with interest as awarded by the Tribunal, to the claimants. The difference between Rs.88,000/- and Rs.50,000/- is a paltry sum of Rs.38,000/-, which the Insurance Company can very well afford to pay to the widow, mother of the deceased person, who was 33 years of age. The anxiety of the Insurance Company was only to get re-stated the correct legal position and get corrected the serious error of law committed by the Tribunal, which I have done. In the present peculiar and pathetic facts and circumstances, I am, however, not inclined to deprive the claimants from the relief granted by the Tribunal and leave

them to chase the owner and the driver of the offending bus-vehicle in accident. I wish to commit a little wrong for better right.

10. The award of Rs.88,000/- towards compensation to the claimants by the Tribunal is maintained and is not disturbed. Out of this amount of Rs.88,000/- there is no dispute that the Insurance Company has already paid an amount of Rs.15,000/- during the pendency of the Claim Petition. The balance would be Rs.73,000/-. the Insurance Company is, therefore, hereby directed to pay the full amount of compensation awarded by the Tribunal after adjusting whatever amount is paid and whatever amount is deposited. The claimants would be entitled to get the whole amount deposited and invested by this Court, including the accrued interest on such investment. The appellants, Insurance Company, will be at liberty to recover the amount over and above their liability of Rs.50,000/-, with interest, from the respondent nos.15 and 16 in the Appeal, in accordance with law, It is clarified that it would be the claimant no.1, i.e respondent no.1 herein who will be entitled to get the entire amount of compensation.

The Appeal is disposed of. No order as to costs.

R. J. KOCHAR,J.